

## **REMARKS**

In response to the Office Action mailed December 24, 2003, claims 1-44 are pending upon entry of the foregoing Amendment. By this Amendment, claims 1-44 are amended. In view of the foregoing amendments and following comments, allowance of all the claims pending in the application is respectfully requested.

### ***Rejections Under 35 U.S.C. §§ 102 and 103***

Claims 1-8, 10-22, 24-36 and 38-44 are rejected under 35 U.S.C. 102(e) as being anticipated by USPN 6,512,919 to Ogasawara. Claims 9, 23, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogasawara in view of USPN 6,026,375 to Hall et al.

As set forth in the response filed June 2, 2003, Ogasawara appears to require that a user first dial the telephone number of a server associated with a particular store to initiate the download of a purchase transaction program to the user's wireless telephone before the user can commence scanning bar codes of items to be purchased. Ogasawara does not disclose receiving any type of order data for an order when the user dials the server to initiate the download of a purchase transaction program. A program that may facilitate the ability to place an order is not itself an order as set forth in the claims.

The Examiner alleges on page 5 of the Office Action mailed December 24, 2003 that the Applicant's specification on page 11 discloses a parallel approach for processing orders to that relied on by the Examiner in the Ogasawara reference because "a customer may be provided with information to initiate a transaction from a facilitator." Providing information to initiate or "facilitate" a transaction is not the same as receiving order data. While the relied upon portions of the specification may indicate that a customer may be provided with information to initiate a transaction, the specification also states that "customer device 102 may have all information required to

generate the first order data" (See p 11, lines 13-14), enabling an intermediary to receive first order data without being first provided with information to initiate a transaction, recognizing that these are separate and distinct operations. Independent claims 1, 15, 29, and 43 recite the operation of receiving order data. Thus, independent claims 1, 15, 29, and 43 are patentable over Ogasawara as previously presented.

Nonetheless, in an effort to expedite prosecution of this application, Applicant has amended independent claims 1, 15, and 29, recite, among other things, "receiving at an intermediary first order data and device identification data from a mobile device" identifying products or services that a user "desires to purchase from one of a plurality of merchants". Independent claim 43 introduces the use of a transaction facilitator acting to receive first order data in a manner substantially similar to that claimed in independent claims 1, 15, and 29. Ogasawara does not disclose at least the feature of receiving first order data at an intermediary, but rather describes a method of communicating directly with a server associated with a particular merchant. For at least this additional reason, Ogasawara does not disclose each and every feature of the invention as claimed. Thus claims 1, 15, 29 and 43 are not anticipated by Ogasawara.

Dependent claims 2-8, 10-14, 16-22, 24-28, 38-42, and 44 depend from and add additional features to one of claims 1, 15, 29, and 44. Thus, for at least the reasons set forth above, these dependent claims are not anticipated by Ogasawara.

With regard to claims 9, 23, and 37, Hall does not make up for the deficiencies of Ogasawara set forth above with regard to claims 1, 15, and 29. Thus, the combination of Ogasawara and Hall does not teach and/or suggest the features of claims 9, 23, and 37. Applicants respectfully submit that dependent claims 9, 23, and 27 are patentable over Ogasawara and Hall.

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## **CONCLUSION**

Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Dated:

Respectfully submitted,

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